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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,141	09/08/2003	Johannes Schmid	032498-016	8660
21839	7590	12/13/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P				TRAN, KHOI H
POST OFFICE BOX 1404				ART UNIT
ALEXANDRIA, VA 22313-1404				PAPER NUMBER
				3651

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/656,141	SCHMID, JOHANNES
	<b>Examiner</b>	<b>Art Unit</b>
	Khoi H Tran	3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

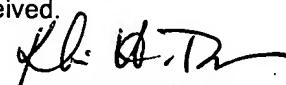
#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



KHOI H. TRAN

PRIMARY EXAMINER

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>02/04</u> .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the references and actual values being represented on the display unit must be shown or the features canceled from claims 5, 13, and 20. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"valves of supply pipes" lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 6, 7, 10, 11, 14-16, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Dirksing et al. 6,516,245.

Dirksing '245 discloses a device for mixing substances (cosmetic) and method of operating said device for mixing substances per claimed invention. The mixing device 130 comprises a processor unit having memory for storing mixing formula (Figures 2A and 2C). The processor controls the drive unit and valves for dispensing appropriate amount of substances to be mixed (Figures 2C and 2D). The device comprises a display unit (LCD, not shown, column 4 last paragraph) for displaying a dispensing formula. The device comprises a measuring device by which portions of substances in quantities determined according to a mixing formula are filled into a container. The processor unit is connected to a communication module for establishing a wireless connection to a data server, i.e. the Internet (column 4, lines 50-54, column 5, first paragraph). The mixing formula can be transmitted to the memory unit from said data server (Figure1). The formula can be manually adjusted to accommodate user's preference.

In regards to claim 11, when a new formula is introduced to the device 130 it is interpreted to be a new mixing formula. When an existing formula is modified by a user, it is a modifying formula replacing the existing formula.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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4. Claims 2-5, 9, 12, 13, 17, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksing et al. 6,516,245.

In regards to claims 2 and 3 Dirksing '245 discloses all elements per claimed invention. However it is silent as to the specific of the wireless communication module operates according to a mobile radio protocol or/and according to at least one wireless Local Area Network protocol.

As pointed out from Applicant's specification and the filed Information Disclosure Statement, wireless communication having mobile radio protocol and/or Wireless Local Area Network protocol (W-LAN) are commonly well known.

It would have been obvious for a person with ordinary skill in the art at the time the invention was made, to have provided mobile radio protocol and/or W-LAN protocol for Dirksing '245 wireless communication network because it facilitates a well-known wireless communication protocol for the network.

In regards to claim 4, Dirksing '245 discloses all elements per claimed invention. However it is silent as to the specific of the communication module operates using at least Wireless Application Protocol (WAP) and a Hypertext Transfer Protocol (HTTP).

As pointed out from Applicant's specification and the filed Information Disclosure Statement, WAP and HTTP protocols are commonly well known for providing communication protocols within an Internet environment.

It would have been obvious for a person with ordinary skill in the art at the time the invention was made, to have provided WAP and HTTP protocols for Dirksing '245

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wireless Internet communication network because it facilitates well-known communication protocols for the Internet network.

In regards to claims 5, 13, and 20, Dirksing '245 LCD (not shown) can be used to display a reference value of an original color formula and an actual modified formula after the original formula has been changed by a user.

In regards to claim 9, it is obvious that the LCD can be combined into the device to form an integrated unit. Such modification is commonly well known.

In regards to claims 12 and 19, it is obvious that the updating of data in the local memory takes place a) before a start of a mixing process; b) at a predefined or at selectable time intervals; c) in response to manual control, or; d) in response to being initiated by the data server from the Internet.

5. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksing et al. 6,516,245 in view of Muscara 5,718,268.

Dirksing '245 discloses all elements per claimed invention as explained in the above paragraphs. However, it lacks a scale.

Muscara '268 discloses a mixing device having a scale 17. Muscara '268 teaches that the scale provides accurate measurement of dispensed and mixed product within a receiving container.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Dirksing '245 with a scale because it facilitates the accurate measuring of dispensed and mixed substances within said mixing device, as taught by Muscara '268.

***Conclusion***

Additional references made of record and not relied upon are considered to be of interest to applicant's disclosure: see attached USPTO Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoi H Tran  
Primary Examiner  
Art Unit 3651

KHT  
12/09/2004